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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/790,392 | 03/01/2004 | William L. Grilliot | MOR3334P1071US | 2675 |
| 32116 | 7590 | 06/27/2005 | EXAMINER | |
| WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661 | | | WELCH, GARY L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3765 | |

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/790,392

Applicant(s)

GRILLIOT ET AL.

Examiner

Gary L. Welch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's amendments and arguments, filed 30 March 2005, have been reviewed and considered. The specification objections raised in the first Office Action are withdrawn in view of the amended portions of the specification. No claims are amended and therefore claims 1-14 are currently pending.
2. Firstly, applicant traverses the prior art rejections to claims 1, 2, 8 and 10 as being unpatentable over Lewis et al. (U.S. 6,766,534). It appears that the applicant does not believe that Lewis et al. qualifies as prior art based solely on date. Applicant does not argue whether or not Lewis et al. discloses the claimed elements thereby, the examiner assumes that the applicant agrees with the examiner's prior art rejection to the claims (except for the date issue).

Examiner's Response:

Lewis et al. '534 is a continuation-in-part of U.S. Patent 6,662,375 (hereafter Lewis et al. '375). Lewis et al. '375 has a publication date of December 16, 2003 and a filing date of May 1, 2002. The material disclosed in Lewis et al. '534 and used in the prior art rejections in the first Office Action are disclosed in Lewis et al. '375. Therefore, the examiner believes that Lewis et al. '534 qualifies as prior art. It is noted that Lewis et al. '375 does not have a common inventor with the instant application. Therefore, the previous prior art rejections presented in the first Office Action remain and are presented below.

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Secondly, applicant traverses the rejection of claims 1-14 as being unpatentable under 35 U.S.C. 103 over Worton (U.S. 4,899,336) in view of La Marre et al. (U.S. 3,691,564).

Examiner's Response:

Worton discloses that the protective coverall has protective material that can overlie only portions of the chest, arm and thighs, overlie the entire coverall (Col. 1, lines 34-40) and overlie only the chest, arm and thighs. Therefore, Worton teaches protective coveralls that are entirely protected, partially protected and minimally protected.

La Marre et al. teaches a protective jacket having a metallic foil or metallized plastic covering the front panel of the jacket. The covering extends from the bottom of the jacket to either a location near the sternum of the wearer or higher if a collar is employed. Therefore, La Marre et al. teaches a fluid impervious, heat reflective layer continuous from a region at or near the top of the garment to a region at or near the bottom of the garment.

The protective garments of Worton and La Marre et al. are used by welders and are therefore analogous art. The prior art rejections presented in the first Office Action are properly combinable from the known teachings and are maintained.

Claim Rejections - 35 USC § 103

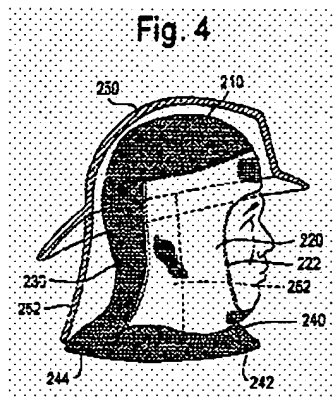
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. (U.S. 6,766,534).

Lewis et al. discloses a firefighter protective garment 200 having a back portion 230 that is breathable to allow air and water vapor to pass therethrough and a front portion 220 including a fluid-impervious, heat-reflective layer that is continuous from a region near the top of the garment to a region near the bottom of the garment 200.

Figure 4 of Lewis et al. shows the garment 200 worn in combination with a firefighter's helmet 250. Therefore, since the wearer's head is protected with a helmet 250, the top portion of the garment 200 is manufactured from same material as the back portion 230. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to increase the wearer's protection by increasing the coverage of the fluid impervious, heat reflective layer nearer the top of the garment 200.



With regard to claim 2, the heat reflective layer is continuous from a region at or near one side of the front portion 220 to a region at or near the other side of the front portion 220 (see Figure 4 where layer extends from right side seam, across face to left side seam).

With regard to claims 8 and 12, the invention is disclosed in the above rejections.

5. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worton (U.S. 4,890,336) in view of La Marre et al. (U.S. 3,691,564).

Worton discloses a protective garment 10 having a back portion and a front portion 16. The back portion is fabricated from any lightweight fabric for summer use or any heavily insulated fabric for winter use. The front portion is provided with an additional layer of fireproof material that covers the chest, arms, thighs and zipper area so as to protect the wearer from burns or other injuries. Worton discloses that these areas are more susceptible to burns than the back portions of the garment and therefore, there is fireproof material provided to the back portions of the garment to save costs (Col. 1, lines 30-48).

However, Worton does not disclose that the front portion includes a fluid-impervious, heat reflective layer.

La Marre et al. teaches a protective garment 10 worn by welders. The garment 10 is fabricated from 100 percent cotton which is breathable to allow air and water vapor to pass. The front portion 11 of the garment 10 additionally has a layer of highly reflective, water impervious, flexible metallic sheet material such as aluminum foil or aluminum Mylar that extends from the bottom region of the front portion 11 to the top region (Col. 3, lines 19-23). The aluminum material is highly reflective and rejects welding heat and radiant energy thereby keeping the garment and wearer relatively cool (Col. 2, lines 6-17).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the fire-proof material of Worton with the aluminum material sheet as taught by La Marre et al. since the aluminum material is highly reflective and rejects welding heat and radiant energy thereby keeping the garment and wearer relatively cool (Col. 2, lines 6-17).

The garments of Worton and La Marre are directed to welder's garments and there is no mention in the specifications that refers to a firefighter or an emergency worker. However, the preamble of the claim, "For a firefighter or an emergency worker" does not offer any structure that patentably defines over the garments of Worton and La Marre et al. but only defines the environment in which the garment is to be used. Therefore, the garments of Worton and La Marre et al. inherently have the capability of

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being used by a wearer to fight a fire or by an emergency worker in performing any emergency duties.

With regard to claim 2, the heat-reflective layer is continuous from a region at or near one side of the front portion to a region at or near the other side of the front portion.

With regard to claims 3 and 13, the invention is disclosed in the above rejections.

With regard to claims 4 and 14, flap 42 is provided with fireproof material, heat reflective material which protects the opening between both sides of the front portion of the garment.

With regard to claims 5 and 9, the front and back portions are provided with breathable moisture and thermal barriers (24, 25, 26). The heat-reflective layer overlays the barriers on the front portion.

With regard to claims 6, 7, 10 and 11, the heat reflective layer is an aluminized polyester film layer (Col. 2, lines 6-17 of La Marre et al.).

With regard to claims 8 and 12, the invention is disclosed in one or more of the above rejections.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

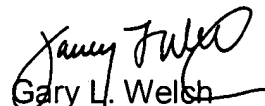
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (571) 272-4996. The examiner can normally be reached on Mon-Fri 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary L. Welch
Primary Examiner
Art Unit 3765

glw